

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

original

77-6093

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In The
United States Court of Appeals
For The Second Circuit

WINIFRED D. MORIO, Regional Director,
Region 2 of the National Labor Relations Board,
for and on behalf of the NATIONAL LABOR
RELATIONS BOARD,

Appellee.

-against-

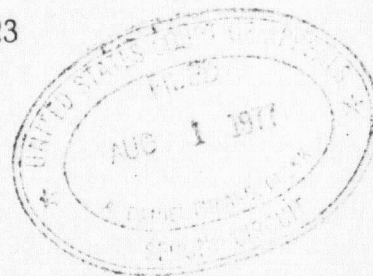
LOCAL 456, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA,

Appellant

*On Appeal from the United States District Court for the Southern
District of New York.*

APPELLANT's REPLY BRIEF

JOHN R. HAROLD
Attorney for Appellant
160 South Central Avenue
Elmsford, New York 10523



UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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WINIFRED D. MORIO, Regional Director, :
Region 2 of the National Labor Relations :
Board, for and on behalf of the NATIONAL :
LABOR RELATIONS BOARD, :
:

Petitioner - Appellee, :
:

- against - :
:

LOCAL 456, INTERNATIONAL BROTHERHOOD OF :
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND :
HELPERS OF AMERICA, :
:

Respondent - Appellant. :
-----X

APPELLANT'S REPLY BRIEF

John R. Harold, Esq.
Attorney for Appellant
160 So. Central Avenue
Elmsford, New York 10523

INDEX

	<u>Page</u>
ARGUMENT	
A. There Were No Disputed Facts Below. Hence the Circuit Court has the Power and Duty to Determine, on the Total Record, Whether an Injunction Should Have Issued.	1
B. An Organizational Or Recognitional Purpose Has Meaning in the Labor Law.	2
C. The Predicate of the Lower Court's Decision Was The Union's Reference to Paragraphs of the Industry Contract Claimed to Destroy the Area Standards Picketing and Make It Organizational or Recognitional. But Such Allegation Was Not And Could Not Deal With "The Same Subject Matter" As The Charge.	4
CONCLUSION	5

TABLE OF AUTHORITIES

Cases

Danielson v. Joint Board of Coat, Suit & Allied
Garment Workers Union, 494 F 2d. page 1

Douds v. International Longshoremen's Association,
241 Fed 2d 278. page 4

NLRB v. National Licorice Company, 2 Cir. 104 F.
2d 655. page 4

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APPELLANT'S REPLY BRIEF

ARGUMENT

- A. THERE WERE NO DISPUTED FACTS BELOW. HENCE
THE CIRCUIT COURT HAS THE POWER AND DUTY
TO DETERMINE, ON THE TOTAL RECORD, WHETHER
AN INJUNCTION SHOULD HAVE ISSUED.

The NLRB, at page 11 of its Brief, cites Danielson v. Joint Board of Coat, Suit & Allied Garment Workers Union, 424 F. 2d at 1245, for authority that, where disputed issues of fact exist, the District Court should sustain the NLRB Regional Director. Yet, at page 8 of the NLRB Brief, it states, "Based on these uncontested facts....."

Local 456 has agreed that there were no disputed facts, hence the totality of the record is before the Circuit Court, and it may, on its own review and conclusions, adopt its own admonition not to grant injunctive relief against the Congressional mandated caution, i.e.: Danielson v. Joint Board of Coat,

Suit & Allied Garment Workers Union, at page 1242 (pg. 20, Union Brief).

B. AN ORGANIZATIONAL OR RECOGNITIONAL PURPOSE
HAS MEANING IN THE LABOR LAW

While it is true that the Courts have found a claimed area standards picket line to be, under some circumstances, in truth, an organizational or recognitional picket line, it is not logical to expect the Court to find some factual evidence of an effort to "organize" or to seek "recognition"?

In the instant case, there is no evidence that the Union ever sought to organize the Company employees; there is no evidence that the Union ever demanded or sought recognition for the employees of the Employer.

To the contrary, the NLRB found repetitively that a legitimate area standards picket line existed, and did not dismiss an earlier charge because it "lacked merit" (NLRB Brief, page 5). The language of the NLRB, four months after the picketing began, is quite specific, -- to the effect that the Union "was maintaining an area standards picket line"; it being also noted that the Union had, in fact, first found that the Company was not meeting prevailing standards (A-21), (page 3 - Union Brief).

Thus, all that can be claimed here is that, at a meeting called only for the specific purpose of discussing area standards

and for no other reason, the Union only in that context made references to contract paragraphs and only in relation to the predicate of the meeting to discuss economic conditions, with the precise and stated reservation that under no circumstances were they seeking recognition.

To the point, when, where, and how, did the Union seek to "organize" or represent the Company's employees, or seek "recognition", as their representative? The mandate not to easily grant an injunction should fall upon at least a tiny piece of proof, not a subjective conjecture.

The subjective conjecture has been made in face of the rulings of the NLRB, in face of the prescribed and specific purpose for the May 4 meeting, and in face of the specific statement that in no sense was the Union seeking recognition.

Thus, it is hard to believe that it is reasonable to conclude that the Union was seeking recognition or to organize the employees.

C. THE PREDICATE OF THE LOWER COURT'S DECISION WAS THE UNION'S REFERENCE TO PARAGRAPHS OF THE INDUSTRY CONTRACT CLAIMED TO DESTROY THE AREA STANDARDS PICKETING AND MAKE IT ORGANIZATIONAL OR RECOGNITIONAL. BUT SUCH ALLEGATION WAS NOT AND COULD NOT DEAL WITH "THE SAME SUBJECT MATTER" AS THE CHARGE.

The Union, in its Principal Brief, argued that the claimed violation of law was outside the charge. The NLRB cites on page 26 of its Brief the case of Douds v. International Longshoremen's Association, 241 Fed. 2d 278, 284 (C.A. 2d 1957). Yet, a reading of that case, and even the language quoted by the NLRB at page 26 of its Brief, supports the Union's contention in argument A of its Principal Brief on page 12.

The charge was predicated only on a refusal to meet to discuss area standards in terms of the Employer's new economic compensation package.

Yet, at the hearing, the NLRB dropped the contention that there was a refusal to meet and, in its Memorandum, dropped its contention that area standards were being paid. The Court's conclusion, therefore, rested solely and wholly on the conversations in regard to the industry contract held between the parties on May 4. Such an allegation was not part of the charge. Thus, in the language quoted by the Board, on page 26 of its Brief, from NLRB v. National Licorice Company 2 Cir. 104 F. 2d 655, it states that the charge must deal with the "same subject matter".

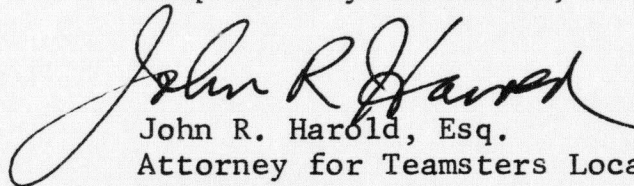
It is respectfully suggested that a refusal to meet to discuss an economic package on the question of area standards picketing is unrelated to the subject matter of a reference to paragraphs of the industry contract in a case where the Board itself abandoned the contention that area standards were being paid.

The subject matter of the complaint, and the decision of the Court below, predicated on a reference to the industry contract as being a claim of the Union's efforts to organize the employees or to be recognized as their representative, which was, as the NLRB itself concedes, not part of the same subject matter as the charge.

CONCLUSION

The Injunction should be vacated.

Respectfully submitted,

A handwritten signature in cursive script, reading "John R. Harold".

John R. Harold, Esq.
Attorney for Teamsters Local 456
160 So. Central Avenue
Elmsford, New York 10523